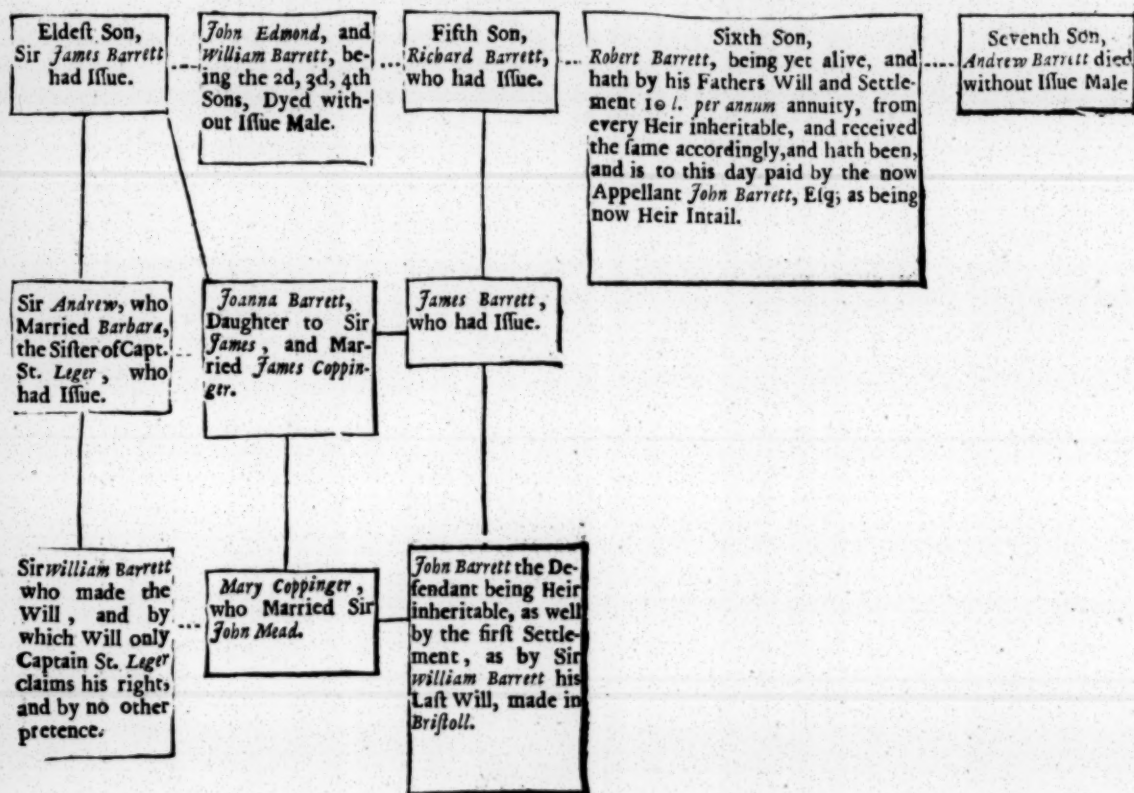


K. Barrett (Andrew)

4

The Pedigree from Old *Andrew Barrett, Esq;* having seven Sons, who made several Feofments to several Trustees in Trust of all his Estate to the use of his Last Will, who made the said Will in *Dublin, July 9. 1613.* and thereby Intails all his Estate upon Sir *James Barrett* his eldest Son, and to his Heirs Male; and for want thereof, to the 2d, 3d, 4th, 5th, 6th, 7th Sons, as by Inquisitions, Deeds and Records, may, and will appear.

Old Andrew Barrett, Esq; and Katherine his Wife had seven Sons, as follows :



BRISTOLL, February 16. 1672.

The Will of Sir William Barrett, by which alone Capt. John St. Leger Claims the Estate of John Barrett, Esq; is as followeth.

THIS is to let the litigious and wrangling World know, That I leave (as Justice and my Conscience tells me I ought) all my Estate that is Intailed to the Right and Lawful Heir; and that which is not Intailed, to my Uncle John St. Leger and his Heirs Males; but for want thereof, to return to the right Heir. I do also desire that he will be Guardian to the youth, and breed him as well as he can; and if he prove good for any thing, dispose of him as you think fit; if not, turn him amongst the rest. I do leave also to my Uncle John St. Leger, the remainder of Sir Richard Kirle his Bond, which is 100 l. and this last half years Rent, of which I have not received one penny: Out of this Money, pray pay 40 s. to Mr. Watton, Goldsmith, and 12 l. to Mr. Danvers, Laceman, who lives in a little Alley beyond Somerset-house, 40 l. to Mr. Poulin, Draper, at the sign of the Raven in Fleetstreet, and 46 s. to my Brother Warham; and I desire futher, in case you accept of this trouble, that during the youths minority, you reserve out of the Estate 200 l. 100 l. to be paid to my Sister Mary St. Leger upon the first day of her Marriage, and the other 100 l. to be paid to my Sister Garthwright St. Leger on the first day of her Marriage, and to satisfy the Bonds for 50 l. that lay in Collonel St. Leger's hands: and so I bid the world farewell, and leave this as my Last Will and Testament, William Barrett. If you can, prefer this Servant, and give him 10 l. As I always lived decently, pray bury me so: Being present at the Signing of this my Last Will and Testament, Ann Brinsden, John Field, George Turner.

This is a true Copy of the Original Will, Examined Febr. 28. 1672. by us,

Ann Brinsden, George Turner, John Field.

Tho. Hartwell, Not. Pub.

The CASE of JOHN BARRETT, Esq; Appellant from a Decree made by the High Court of Chancery in Ireland, in a Cause there Depending, wherein John St. Leger, Esq; is Plaintiff, against the said John Barrett, Defendant :

Humbly Offered to the Consideration of the Right Honourable the Lords Spiritual and Temporal in Parliament Assembled.

SIR William Barrett being seized of several Mannors, Territories, Lands and Tenements of the yearly value of 1500 l. or thereabouts, if set to the real value, situate, lying and being in the County of Cork in Ireland, of an Estate Tail, with remainder in Tail to the Appellant, and being also seized in Fee of divers other Lands and Tenements, did, Feb. 16. 1672, by the perswasion of his Landlady where he lodged, make his Last Will and Testament in Writing, whereby he left (as in Justice he ought to do) and did bequeath to the Appellant all his Intailed Estate; and his Estate in Fee-simple to the Respondent John St. Leger and his Heirs Male, with remainder over to the Appellant : made the Respondent Guardian to the Appellant, and shortly after dyed.

After Sir William's Death, the Appellant entred upon, and took possession, by the Respondents permission, of all the Intailed Lands, and the Respondent entred possession of those which were fee-simple.

The Respondent also accepted (jointly with John Barrett the Appellants Uncle) of the Guardianship of the Appellant, and entered into Articles under Hand and Seal, faithfully to perform the Trust of a Guardian. Covenanted to sue for the Writings relating to the said Intailed Estate, and to account to him for the Profits thereof, when he should come of Age, and then to deliver him back his said Estate and Trust; in which Articles there is contained one, That the Appellant, when of age, should intermarry with his Daughter, which certainly the Respondent St. Leger would not have covenanted to do, had he not known the Estate in Question was Intailed, and belonged to the Appellant, who had not one Groat in the World beside to depend upon.

Pursuant to which agreement, the Appellant lived with the Respondent a year, was and is a Protestant, and constantly went to Church, and the Respondent permitted the Appellant to receive the Rents and Profits of the Lands in question, and in his Right, and as his Guardian Exhibited a Bill into the High Court of Chancery in Ireland, against the Respondents own Sister, who was the Mother of Sir William Barrett; in which Bill he set forth all the Ancient Intails, under which the Appellant claims, and the Appellant's Title to the said Estate in Question; by which Suit he got into his possession from his said Sister all the ancient Deeds and Writings, relating to the Appellants Title; which done, and the Appellant leaving him, and chusing a new Guardian, because he would not marry his Daughter; he the said Respondent contrived how to Defraud him of all his Estate, and for that purpose took the method following.

He Exhibited a Bill in the High Court of Chancery in Ireland against the Appellant, thereby setting forth, that most of the Intailed Lands in Question (and which then by the Respondents own permission) was in the Appellants possession) belonged to him; the said Respondent for that they never were Intailed, but were Lands whereof Sir William Barrett dyed seized in Fee-simple, and had given to him by his Will aforesaid, and to induce the Court to believe that the said Lands were Fee-simple Lands, he set forth, that the same were the Inheritance of Katherine, the Wife of Old Andrew Barrett, who was Great Grandfather to Sir William Barrett and the Appellant, and that Andrew, their said Great Grandfather, could not Intail the same; prayed to examine Witnesses in perpetuum Rei memoriam, to prove the Will of his Testator, Sir William Barrett, whereby the same were devized to him and his Heirs.

To which Bill the Appellant answered, and denied all the Allegations thereof. Issue thereupon was joyned, Witnesses examined, Publication past; And

29 Nov. 1677. The Cause came to Hearing before his Grace the Lord Chancellor of Ireland, when (and at several other Hearings thereof before) the Councils for the Appellant insisted, that the Will being proved, the Cause ought not to proceed any farther in that Court. That Court having no Jurisdiction thereof, it being a Question of Free-hold and Inheritance, which is properly and only determinable at the Common Law.

Nevertheless his Lordship, upon the said hearing, directed that a Tryal at Law should be had upon one single Issue.

Viz. What Lands Andrew the Great Grandfather was seized of in Right of Katherine his Wife, and whether he made any Intails, and of what Lands.

To this Tryal neither the Appellant nor his Counsel ever gave their consent, but were forced thereunto; nor did the Appellant consent that a Jury should be appointed by the Court of Chancery, but his Grace commanded the Sheriff to bring the Pannel of the County into the Court, where the same was named: the Foreman whereof Sir Richard Aldworth married his Grace's Niece, Sir Richard Hull was his Sisters Son, besides these there were others related to his Grace, and the Respondent Impannelled; none of which the Appellant durst presume to accept against, because of their Relation to his Grace, and his Graces Relation to the Respondent, who is Brother-in-law to the Earl of Inchiqueen, which Earl intermarried with his Grace's Sister.

28 Jan. 1677. A Tryal upon the Issue aforesaid was had, when the Jury found that Andrew Barrett, the Great Grandfather was seized in Right of Katherine his Wife of most of the Lands in Question, and also many thousand Acres of Land belonging to other persons, which the Respondent did not Claim by the Bill (adding as followeth), *viz.* We do not find that the said Andrew made any Intail.

After



After which Verdict, the Cause coming again to be re-heard, Exceptions were taken to the Proceedings of that Court therein (and against the said Verdict), for that

1. The Court ought not to have proceeded in this Cause to direct the Tryal of any Issue whatsoever, nor otherwise than to have enabled the Respondent to prove the Will in Question.

2. The Issue was unreasonable, Restraining the Appellant from the just Defence of his Right and Title, it being only to try whether *Andrew* the Great Grandfather made any Intail; whereas if Grandfather, the Father, or Sir *William Barrett* himself had Intailed the same, the Respondents pretended Right is bound thereby.

3. The Issue was to try an Intail *de Jure* only; whereas an Intail *de facto* is sufficient to make good the Appellants Title; and it is notorious that Sir *William Barrett* in his life-time lookt upon it as Intailed: and in his Answer to a Bill in Chancery, Exhibited against him in his life-time, Swore it was Intailed, and as such devised it by Will to the Appellant, which Intail *de facto* is sufficient to ascertain the Appellants Title.

4. The Verdict in it self is uncertain as to the matter, for it only saith they did not find that *Andrew Barrett* made an Intail, but doth not say that *Andrew Barrett* made no Intail; and yet upon this Verdict, which recites but part of the Land in Question. 5 July 1677, the Court of Chancery, notwithstanding the Exceptions aforesaid, proceeded to Decree from the Appellant, and to the Respondent all the Lands in Question, without admitting him to a new Tryal, though moved for, and Affidavits made of new Evidence being found after the aforesaid Tryal had; which Evidence, by the Respondents Art, were kept concealed till the said Tryal was over.

May 1678. The Cause coming again to be heard, his Grace called to his assistance the Lord Chief Baron, Mr. Justice *Reynell*; the former upon hearing Counsel on both sides, declared the Cause was improper for that Court, and that both the Issue and Verdict were uncertain.

Feb. 1677. His Grace (as by the Notes taken upon that days hearing appeareth) declared he was satisfied, Sir *William Barrett* believed there was an Intail, and that he intended something to the Appellant by his Will, but what, was the Doubt. Whereupon he ordered a Reference, advised the Parties to agree, declaring, That if they did not, the Court had the Rains in their hands, and a Hank upon them both; adding, That if the Respondent should insist too much upon his Right, the Court would give the Appellant liberty to defend his Right at Law; and the Court has the Appellant in their power, if he should insist too much upon his Right. It having been found there is no Intail; whereupon the Court, in the Appellants absence, without his consent, and when he was above 100 Miles distant from *Dublin*, proceeded to make an Order of Reference (the Respondent then present, and naming his Referee); by which Order it was directed, that the Appellant should meet the Respondents Referee at *Cork*, and there name his Referee to joyn with him, and the Court would make choice of an Umpire; but the Appellant (being advised by his Council, that it might hazard his Title, and injure the Heir in Remainder to attend the said Reference) never appeared: Whereupon for his Contempt, the Court awarded a Sequestration against all his Estate, before any final Decree made, which Sequestration was continued till December 1678. When his Grace re-heard the Cause, assisted with six Judges; but before the Cause was entered upon, declared to the Judges, that they should only speak to the Construction of the Will aforesaid.

But not to the Jurisdiction of the Court.

Nor whether the Cause were properly Cognizable by that Court.

Nor whether the Issue tried at Law were a proper Issue; nor whether the Verdict obtained upon that Tryal were certain: Nevertheless the Lord Chief Baron, Sir *Richard Keneday*, and Mr. Justice *Jones* delivered their Opinions positively.

1. That the Respondents Bill ought to be Dismissed, for that Court had no Jurisdiction of the Cause; and gave as their Judgment, that upon the Will it self the Matter of Law was for the Appellant.

2. The Lord Chief Justice *Booth*, and Mr. Justice *Johnson* delivered their Opinions, That allowing their former Proceedings to be regular, and that there was no Intail *de Jure*, or *de facto*; that then, and in such case nothing past to the Appellant by the Will in Question.

But Mr. Justice *Reynell* declared, That his Grace ought to proceed to Decree for the Respondent: Whereupon

Feb. 1678. His Grace declaring, That nothing the Judges delivered had prevailed with him to alter his Opinion, therefore Decreed all the Lands in Question (being all the Estate the Appellant hath) to the Respondent; notwithstanding the Verdict doth not extend to many of the Lands in the Respondents Bill mentioned; and for which his Grace upon former Hearings had declared the Respondent could have no Decree, yet the Respondent is like to be put into the possession of the Estate which this Appellant and his Ancestors have enjoyed, and been possess of for many Hundred years last past.

And although it is mentioned, that the said Decree should be without prejudice to the Appellants having a new Tryal, in case he can find out any new Intail, yet is the Appellant ruined thereby: for, first, there never was any Intail, but what he hath now found, and moved for a new Tryal, because kept from him at the former Tryals, and such new Tryal denied.

2dly, For that as the Order is pen'd, if a new Intail should be found, yet cannot the Appellant have a new Tryal, till he hath first performed the Decree, so that he must deliver the possession of his Estate to the Respondent; which done, he hath not a penny to help himself, or wage Law against the Respondent for recovering of it back; besides, the Respondent hath most of the Evidences that prove the Appellants Title in his possession; so that if the Estate be Decreed his, and delivered to his possession, the Deeds relating to it belong to him also, and the Decree will warrant his destroying them; which being done, will put an utter impossibility upon the Appellant ever to prove his Title, or recover back his Estate by any Tryal at Common Law, where the Respondent ought to sue for his Right, if he have any, and not in Chancery.

From

April 1679. From which Decree and Proceedings (for the Reasons aforesaid, as well as for that the same is Illegal and Arbitrary, and tends to the subverting the due course of Tryals of Rights of Inheritance and Free-holds; and if led in Example and President, may prove pernicious to the publick, and by consequence, in a short time, become the Destruction of Property) the Appellant address to this Supreme Court of Judicature and Fountain of Justice for Relief, and appealed from the Jurisdiction of the Court of Chancery in Ireland in this Cause, as well as from the Decree aforesaid, and prayed the Respondent might Answer, and the Cause be heard, and he receive Relief agreeable to Justice, and that his possession in the mean time might be quieted, which Appeal was signed by Serjeant Maynard, Sir Francis Pemberton, Sir Henage Finch, Sir Francis Winnington, and Mr. Keck.

To this Appeal the Respondent answered, this Appellant replied, and a re-joynder was put in, but the Respondent prevented a Hearing the last Parliament save on, by alledging all his Papers were in Ireland, when-as he came into England on purpose to attend the said Appeal.

The Appellant from April 1679, till Aug. 1680, attended his Appeal in England, waiting for the Sitting of the last Parliament.

Easter-Term, 1680. The Respondent delivered the Appellants Tennents Declarations in Ejectment in Ireland, and prest for a Tryal last Summer Assizes, when the Appellant, with all his Evidences, were in England waiting for the Session of the last Parliament (by which he intended to have surprized him); but that was denied, and a Tryal at Bar directed to be had Michaelmas-Term last; accordingly a Jury came from the County of Cork to try the Cause: Notice was given that the Tryal should be had the 22d of Novemb. 1680. 48 l. was Deposited in Court by the Respondent to pay the Jury, and the Respondent upon Appellants motion in Chancery (that he might Elefct which Court to proceed in, for that he ought not to have two Suits Depending in two several Courts at the same time, and for the same matter) chose to proceed at Law, and his Bill in Chancery had been Dismist, but that it was Exhibited to examine Witnesses in perpetuam Rei Memoriam; so that the Appellant well hoped his Appeal had been at an end, it seeking only for Liberty to try his Title at Law; but the said Respondent, because the Court would not grant Liberty to Exemplifie the Deposition of one Mrs. Brimsdome, Sir William Barretts Landlady examined by him at Brisfoll (who is now living), and to use the same at the said Tryal (which was opposed by the Appellant, as being contrary to the Practice of the Court, therefore the Respondent would not proceed to Tryal; took his 48 l. out of Court, and moved, that the Suit might be discontinued; the last motion was denied, and the Suit is still Depending, and ready for Tryal; but the Appellant by these means hath been put to vast charge, in going to Ireland, Feeing Counsel, providing and bringing Witnesses to Dublin; and the Court of Exchequer 27 Nov. 1680, by Rule declared it was not the Appellants fault the Tryal was not heard last Michaelmas-Term.

Now the Reason why the Appellant insisted upon it by his Council, not to give way to the use of the Deposition, desired it as followeth.

The Respondent first Exhibited a Bill only to prove the Will in question: To which the Appellant answered, and not opposing the proof thereof, suffered him to Examine Witnesses Ex parte; one of which swore they saw him sign, seal and publish the Will: and this was the Evidence he desired to use at Law.

Afterwards the Respondent Exhibited his Bill against the Appellant, not only to Examine Witnesses in perpetuam Rei memoriam, but also to have the Estate in question decreed to him. In this Cause the Appellant joyn'd in Examining Witnesses, and Cross Examined the Witnesses he desired to make use of at Law; who swore not only the Will made and published, but also that it was done at her desire; and that at the same time Sir William Barretts told her he had refused to make a Will before, though prest thereto, for that his Estate was Intailed; and he left it to a poor boy in Ireland of his Name, to keep up the Name of his family; adding, That seeing God had given it him, he would not take it from him.

The Appellant never denied the making use of this persons Testimony in the Cause, wherein the Decree was pronounced, and the Tryal aforesaid directed, but offered to consent thereunto; but the Respondent would have publisht it in the first Cause, where Examined Ex parte; in which Cause never any farther proceeding was yet had: and this purposely to defeat the Appellant of the benefit of his cross Examination; which the Appellant opposed, and the Court denied to Grant: Whereupon,

20 Dec. 1680. The Respondent leaving the Appellant in Ireland, came to London.

Petitioned this most Honourable House for a hearing, alledging great damage by the Appellants delay, and obtained Order for the Cause to be heard 20 Jan. 1680, without any other notice to be given to the Appellant, then by the affixing up the Order upon the door of this most Honourable House.

24 Dec. 1680. The Appellant Petitioned, setting forth the Proceedings aforesaid, and what delays and tricks had been used by the Respondent, that he was advised his Appeal was at an end by the Respondents chusing to proceed at Law: Therefore prayed that he might not be surprized, offering, if he might have convenient time to come to a hearing, if your Lordships should think fit to hear the Cause. Whereupon

It was Ordered the said Cause should be peremptorily heard the 1st of February 1680.

Accordingly Sir Matthew Dean his Agent came into England 16th January 1680, found the Parliament Dissolved, and hath ever since waited here in order to the hearing of his Cause before this most Honourable House.

This being the third time Sir Matthew Dean, with the Records and Evidences to prove the Appellants Title to the Estate in question hath been hazarded at Sea; (which Evidence if lost, the Appellants Title at Law can never be made out). The Appellant hath spent these six years in Suits to defend his Right above 4000 l. which hath put him into so great debts, that he cannot appear; and if the Cause be not determined by your Lordships, the same will be his, and his posterities utter ruin. Therefore it is most humbly prayed this Cause may receive a determination before your Lordships this present Sessions.



Old *Andrew Barrett*, Esq; his Will, whereby he Intails all his Estate on his Seven Sons, and to their Heirs Males; who was great Grandfather to Sir *William Barrett* who made the Will in *Bristol*, by which Capt. *St. Leger* claims only his Right; which abovesaid Old *Andrew* was also Great Grandfather to the Appellant *John Barrett*, Esquire.

IN the Name of God, Amen, I Andrew Barret of Ballincolly in the County of Cork, Esq; being at this present God be praised in perfect health, and ready to depart for England, have thought fit for avoiding of such dangers and inconveniences as might befall, do make this my Last Will and Testament for the direction of the Estate that it pleased God to lend me, and disposing of the same in the best manner that in so short a time I could call to mind. First, I commend and commit my Body and Soul to Almighty God, whose Divine Spirit, Grace and Assistance, I humbly implore to guide, direct and accompany me for my defence against all wicked spirits, and the suggestions of my spiritual Enemy. And whereas I have Infeoffed my Cousin Mr. Patrick Roch Fitz Morice, by my Deed dated the ninth of this present month and year, of all the Mannors, Castles, Towns, Lands and Tenements, expressed and mentioned in the said Deed, to the use and uses of my last Will and Testament. And now my will is, that the said Patrick his Heirs and Assigns, shall stand and be seized of all and singular the said Mannors, Castles, Towns, Lands and Tenements, and Hereditaments, except such Lands as I have past for my Wife Katharine Barrets Jointure during her life only, and such Portions as I have made assurance of for my beloved Daughter Gennet Sarsfield, during the continuance thereof, and such Mortgages as I have made and stand now in force during the continuance of the same to the use of payment of all debts that shall lawfully appear to the said Patrick to be due upon me by specialty or otherwise; and after taking order for such payments, then to stand seized for preferment of both my Daughters, Ellen and Ellyne in manner following: Vid. for Ellen my Eldest Daughter whom I love, and offended me not, if she shall be matched with the advice and consent of her Mother, her brother James, and their friends, Three hundred pounds, I mean no Irish money, but the best Coyn; and for my Youngest Daughter Ellyne, whom I also love, matching as before, Two hundred pounds of the best Coyn. My Will is, that my Daughter Ellens Portion shall be increased to Two hundred pounds, which preferments are thus to be rated, vid. the Aids due upon my Tenements to be levied; and if her Match be to her friends liking, fifty pounds more, being duly raised of what shall remain to be paid out of the rents and profits of the said Lands in this Mannor, vid. out of my Wifes Jointure (being too great for my Estate) if I had not great respect (as I ought to have of her) the third part of the said overplus of preferments; and out and from my Son and Heir James Barrett two parts; and all the said payments and preferments so paid, then my will is that the said Patrick his Heirs and Assigns shall be seized of all the Premises, (except before excepted) and the four Plow-lands of Garriadin, Ballivillum, Ballivorinse, Balluveran, Kileuomly, and Killmyllion, to the only use and behoof of my Son and Heir James Barrett & to the Heirs Males lawfully by him to be begotten on the body of my loving Daughter Gennet Sarsfield, and for want of such Heirs Males of the body of the said Gennet by him, to the Heirs Males of his body on the body of any other Wife lawfully to be begotten; and for want of such Heirs Males of his body, to the use of John Barrett my second Son, and the Heirs Males of his body lawfully to be begotten, and for want of such Heirs Males of the said John's body, to the use of Edmond Barrett my third Son, and the Heirs Males of his body lawfully to be begotten; and for want of such Heirs Males of the said Edmonds body, to the use of William Barrett my fourth Son in like manner as before, if he become not a Priest or Spiritual man, as is intended; and if he become a Priest or Church-man; or otherwise want Heirs Males of his body lawfully begotten, then to the use of Richard Barrett my fifth Son, and the Heirs Males of his body lawfully to be begotten; and for want of such Heirs Males of the said Richard's body, then to the use of Robert Barret my sixth Son, and the Heirs Males of his body lawfully begotten or to be begotten; and for want of such Heirs Males of the said Robert's body, to the use of Andrew Barret my seventh Son, and the Heirs Males of the said Andrew's body to be begotten, and for want of such Issue, to the use of my right Heirs for ever. And further, my will is, that my said Son and Heir James Barrett, shall after my Wifes death, and after determination of all other Estates in being